

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1035 (PCB SA 03-11) Public Records Exemption/Workers' Comp Records
SPONSOR(S): State Administration and Mack
TIED BILLS: None **IDEN./SIM. BILLS:** SB 284

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>5 Y, 0 N</u>	<u>Williamson</u>	<u>Everhart</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act of 1995 in essence requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it is automatically repealed on October 2nd of the fifth year after enactment.

This bill reenacts with editorial changes the public records exemption for investigatory records and any other records necessary to complete an investigation relating to workers' compensation employer compliance, held by the Department of Financial Services, which will repeal on October 2, 2003, if this bill does not become law. This bill also creates an exception to the exemption for any law enforcement agency or administrative agency.

This bill does not appear to have a fiscal impact on state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: March 3, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Background

The Division of Workers’ Compensation of the Department of Insurance (DOI’s functions with regards to workers’ compensation now reside within the Department of Financial Services), is charged with administering the Workers’ Compensation Law in a manner that facilitates the self-execution of the system and the process of ensuring a prompt and cost-effective delivery of payments.¹

In conjunction with the additional enforcement authority, current law provides that investigatory records of the department and any other records necessary to complete an investigation relating to workers’ compensation employer compliance are confidential and exempt² from public disclosure until the investigation is completed or ceases to be active.³ After an investigation is completed or ceases to be active, information contained in the records relating to the investigation remains confidential and exempt if disclosure would:

- Jeopardize the integrity of another active investigation;
- Reveal a trade secret;
- Reveal business or personal financial information;
- Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or
- Reveal investigative techniques or procedures.

The House Committee on State Administration sent a questionnaire to the Department of Labor and Employment Security (DLES’s functions now reside within the Department of Financial Services) regarding the referenced public records exemption. DLES indicated in its questionnaire response that it had provided case files to the federal Internal Revenue Service and the Florida Department of Insurance, Fraud Division. It appears that the confidential and exempt information was being released to the governmental entities without the proper authority to do so.

¹ Section 440.015, F.S.

² There is a difference between information and records that the Legislature has made *exempt* from public disclosure versus those that have been made *confidential and exempt*. Information and records that are simply made exempt from public disclosure are still permitted to be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5thDCA 1991), and *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4thDCA 1994). If the Legislature makes certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than to the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

³ Section 440.108, F.S.

Current law provides for future review and repeal of the public records exemption for the Department of Insurance's (DOI) investigatory records relating to workers' compensation employer compliance. Pursuant to the Open Government Sunset Review Act of 1995 (Act), s. 440.108, F.S., will repeal on October 2, 2003, unless otherwise reenacted by the Legislature. Pursuant to the Act, the House Committee on State Administration sent an Open Government Sunset Review Questionnaire to DLES and held meetings with staff of the Department of Financial Services regarding the public records exemption.

Effect of Bill

As a result of the questionnaire response and staff meetings, this bill reenacts with editorial changes the exemption under review. It creates an exception to the exemption for law enforcement and administrative agencies. The receiving agency must maintain the confidential and exempt status of the information received. This bill also removes the sentence that requires the repeal of the public records exemption.

C. SECTION DIRECTORY:

Section 1. Amends s. 440.108, F.S., by reenacting with editorial changes the public records exemption for investigatory records relating to workers' compensation employer compliance.

Section 2. Provides that the act shall take effect October 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable. This bill does not affect municipal or county government.
2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act of 1995

The Open Government Sunset Review Act of 1995, provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

Section 119.15, F.S., also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement is required, as a result of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement is not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.